

1938 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1938)  
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in good faith. *Hartkopf v. F.*, 191M595, 256NW169. See *Dun. Dig.* 71, 1445.

#### 6940. Powers.

Certificate of acknowledgment stating that grantor acknowledged deed is some proof of genuineness of instrument. *Craig v. W.*, 190M499, 252NW332. See *Dun. Dig.* 78.

Where notary of one county takes acknowledgment in another county the venue of the certificate should be

entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. *Op. Atty. Gen.*, Feb. 10, 1933.

Notary public has power to take acknowledgment in county other than that in which he resided at time his commission was issued. *Op. Atty. Gen.*, July 24, 1933.

#### 6946. Misconduct.

The violation of this section as well as section 10323 did not prevent a prosecution under that section. 171 M345, 214NW262.

## CHAPTER 47

### Resignations—Vacancies—Removals

#### 6952. Resignations.

Offices of alderman and constable in city of Le Sueur are incompatible, and where one qualified for office of constable, he automatically vacated his office as alderman, and no resignation was necessary. *Op. Atty. Gen.*, May 9, 1933.

Resignation of a state senator may be accepted by the governor, but he need not issue a writ of election if there is to be no session of the legislature before expiration of term for which senator was elected. *Op. Atty. Gen.* (2801-2), Apr. 30, 1934.

#### 6953. Vacancies.

Failure of town treasurer to qualify creates a vacancy which may be filled by appointment. *Op. Atty. Gen.*, Mar. 21, 1929.

Whether village treasurer who has obtained a position in another state may still hold the office depends upon whether or not he has ceased to be an inhabitant of the village. *Op. Atty. Gen.*, Mar. 4, 1931.

Removal from office takes effect irrevocably upon conviction and imposition of sentence, and the officer is not restored upon the entry of a stay of execution of the taking of an appeal. *Op. Atty. Gen.*, Sept. 1, 1931.

With the possible exception of officers in certain villages operating under special laws, there is no provision for the removal of an elective village officer for misconduct except by securing his conviction of a felony or of an offense involving a violation of his official oath. *Op. Atty. Gen.*, Sept. 1, 1931.

Vacancy in office of justice of the peace of city of Wayzata is to be filled by appointment of governor. *Op. Atty. Gen.* (266a-12), Apr. 20, 1934.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. *Op. Atty. Gen.* (320j), Dec. 13, 1934.

Whether acceptance of federal appointment in another city creates vacancy in office of city justice depends upon whether he has ceased to be an inhabitant of his city. *Op. Atty. Gen.* (266a-12), Oct. 17, 1935.

Village counsel has no power to remove one of its members, such as the recorder, proper procedure being appropriate action in district court. *Op. Atty. Gen.* (475), Mar. 26, 1936.

Civil service rule requiring chief of police to be resident of city is valid. *Op. Atty. Gen.* (785b-3), June 25, 1936.

Commission of notary public does not automatically terminate upon insolvency of bonding company or surety, but he should be notified to furnish a new bond, but the furnishing of a new bond does not extend term for which originally appointed. *Op. Atty. Gen.* (320b), May 15, 1937.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

##### Subd. 1.

Person appointed to fill vacancy in office of county commissioner holds only until beginning of official year next following the next ensuing general election. *Op. Atty. Gen.*, Feb. 13, 1934.

Person appointed to fill vacancy in office of county commissioner holds until beginning of official year next following the next ensuing general election. *Op. Atty. Gen.* (126h), May 2, 1934.

##### Subd. 2.

Question whether resignation of president of council of the village of Buhl would become effective immediately without any action on the part of the board discussed. *Op. Atty. Gen.*, Mar. 3, 1932.

##### Subd. 4.

Member of water, light, power and building commission must be an inhabitant and resident of the city. *Op. Atty. Gen.*, Feb. 2, 1934.

Whether absence of village trustee from village for six months for purpose of obtaining employment constitutes abandonment of office and right to compensation is a question of fact. *Op. Atty. Gen.* (359a-21), Dec. 19, 1935.

##### Subd. 5.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. *Op. Atty. Gen.*, Feb. 10, 1930.

A village recorder wilfully failing to perform the duties of his office may be convicted under §10023, and thus create a vacancy in his office under this section. *Op. Atty. Gen.*, Oct. 20, 1931.

One acting as assistant assessor in city of Eveleth was not officer and there was no vacation of office by reason of his conviction of crime. *Op. Atty. Gen.*, May 14, 1932.

There is no provision of law for removal of village trustee but his office becomes vacant upon conviction of an infamous crime or any offense involving a violation of his official oath. *Op. Atty. Gen.*, Apr. 6, 1933.

The term "infamous crime" would not apply to a conviction of a misdemeanor such as the illegal sale of liquor. *Op. Atty. Gen.* (61f), Aug. 21, 1934.

Whether illegal sale of liquor by mayor of a city involves a violation of his official oath depends on the nature of his oath and the place of the sale. *Id.*

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. *Op. Atty. Gen.* (707b-6), Feb. 11, 1936.

City council has no authority to remove members of water and light commission, at least in absence of a conviction of an offense involving violation of official oath. *Op. Atty. Gen.* (358e-1), May 15, 1937.

##### Subd. 6.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). *Op. Atty. Gen.* (437a-15), June 21, 1935.

Person receiving next highest number of votes for justice of the peace is not elected to the office because person who did receive highest number failed to qualify. *Op. Atty. Gen.* (266a-5), Dec. 10, 1935.

Where candidate receiving highest number of votes for mayor of a village was not eligible because he was a citizen of the United States for less than 3 months, a vacancy in office resulted, but the city council after passage of sufficient time could appoint such previously ineligible candidate to office. *Op. Atty. Gen.* (184i), Dec. 12, 1935.

There is no specific time limit within which village officers must qualify, but a vacancy occurs if they do not qualify within a reasonable time. *Op. Atty. Gen.* (471h), Jan. 7, 1936.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. *Op. Atty. Gen.* (469b-5), Feb. 21, 1936.

Where one elected to office of president of a village refuses to qualify within a reasonable time, a vacancy exists, and former officer does not hold over. *Op. Atty. Gen.* (471m), Jan. 13, 1937.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. *Op. Atty. Gen.* (456g), Feb. 18, 1937.

#### 6954. Removal by governor.

The duties of the governor under this section are not mandatory, are not merely ministerial, and cannot be coerced by mandamus. 179M337, 229NW313.

Protracted absences of justice from his town might amount to nonfeasance in office. *Op. Atty. Gen.*, Mar. 19, 1929.

If municipal judge neglects his duties or corruptly violates his oath of office, his removal should be sought by petition to governor. *Op. Atty. Gen.*, June 26, 1933.

Governor cannot remove village constable. *Op. Atty. Gen.*, Aug. 31, 1933.

Persistent refusal or neglect to enforce sentence imposing fine may be made basis for removal of justice of peace. *Op. Atty. Gen.* (266b-9), Nov. 26, 1934.

Removal from public office in Minnesota. 20MinnLaw Rev 721.

**6955. Special commissioner to take testimony.**  
179M337, 229NW313.

**6957. Appointment—How long to continue—Impeachment.**

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of January following such election. State v. Borgen, 189M216, 248NW744.

The provisions of Laws 1929, c. 413, prevail over this section, and a person appointed to fill a vacancy in a village office holds until the expiration of the term, and not merely until the next municipal election. Op. Atty. Gen., Nov. 13, 1931.

Vacancy in office of county commissioner is to be filled by full membership of city council where district lies wholly within city, though only part of council are elected from district, and term of appointee expires at beginning of official year next following next general election. Op. Atty. Gen. (124k), Aug. 25, 1934.

CHAPTER 48

Oaths and Acknowledgments

OATHS

**6963. Oath of office.**

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. Op. Atty. Gen. (456g), Feb. 18, 1937.

**6965. Forms of oath, etc.**

Attorneys suspended for misconduct. 177M203, 225 NW97.

**6967. By whom and how administered.**

List of officers authorized to administer oaths and take acknowledgments and requirements as to attachment of seal stated. Op. Atty. Gen., Mar. 23, 1933.

ACKNOWLEDGMENTS

**6970. Form of certificate.**

Bond of city officer held sufficient to require its acceptance by city council though it contained no provision "for the use of all persons interested" and was executed for surety by "attorney" instead of "attorney-in-fact." State v. City of Eveleth, 196M307, 265NW30. See Dun. Dig. 82.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

A deed written in English language except as to acknowledgment which is in a foreign language, is not entitled to record. Op. Atty. Gen. (373b-9(a)), Jan. 7, 1937.

**6971. Corporate acknowledgment—Evidence.**

State v. City of Eveleth, 196M307, 265NW30; note under §6970. Op. Atty. Gen., March 23, 1933; note under §6967.

**6973. By whom taken in this state.**

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

**6979. In foreign countries.**

A deed written in English language except as to acknowledgement which is in a foreign language, is not entitled to record. Op. Atty. Gen. (373b-9(a)), Jan. 7, 1937.

**6981. Execution according to foreign law.**—All deeds and other instruments may be executed and acknowledged in a foreign country in accordance with the laws of the place of execution.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws, shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one.

3. If there be no such officer of the United States therein, then by the certificate of a counselor or diplomatic officer of any other nation with which the United States has diplomatic relations, in which case, the seal of such consular or diplomatic officer shall be certified by his Foreign Office or by the diplomatic representative of such nation in the United States.

4. Any instrument heretofore or hereafter executed, acknowledged and certified as provided herein, shall entitle such instrument to be admitted and read in evidence in all courts and elsewhere without other proof of execution. (R. L. '05, §2691; G. S. '13, §5748; Apr. 18, 1931, c. 201.)

(1) If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. Op. Atty. Gen., Aug. 7, 1931.

**6983. Acknowledgments after expiration of commission—Curative.**

Laws 1929, c. 169, and Laws 1929, c. 214, legalizes acknowledgments taken by person after expiration of term.

CHAPTER 49

Fees

**6987. Fees of clerk of district court.**

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In actions for partition of land or proceedings in assignments for the benefit of creditors, and proceedings under the right of eminent domain, the court, or a judge thereof, may by order from time to time fix the amount which may be charged and collected, which may be in excess of the amounts hereinbefore provided, except, however, no fee shall be allowed the clerk of court for receiving and paying over any money deposited with the clerk of court where the money is paid or deposited by or for the State of Minnesota, pursuant to Mason's Minnesota Statutes of 1927, Section 6546. (As amended Apr. 12, 1937, c. 187, §1.)

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Sec. 2 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

Fees earned by clerk of district court, but outstanding on account should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

Fees received by clerk of district court under section 2097 should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

Clerk of court paid salary under Laws 1919, c. 229, which specifically excepts real estate tax proceedings, is entitled to fees set forth in §2125 in connection with answers in delinquent real estate tax proceedings. Op. Atty. Gen. (144b-15), July 1, 1936.

(24).

Judgment confessed under §2176-11 is not a judgment to which abstractor or clerk of court must certify as a judgment. Op. Atty. Gen. (520b), Apr. 20, 1936.

Each individual name submitted as part of an entity constitutes a single "judgment debtor." Op. Atty. Gen. (144h-15), Nov. 24, 1936.

(46).

This section applies to a default action to foreclose a real estate mortgage though the action is tried to the court, and clerk's fees are limited to \$4.00. Op. Atty. Gen., Apr. 27, 1931.